Trendsettah USA, Inc. v. Swisher International, Inc., 8:14-cv-01664-JVS-DFM

TENTATIVE ORDER REGARDING PLAINTIFF'S MOTIONS TO EXTEND TIME, AMEND JUDGMENT, AND FOR ATTORNEYS' FEES

Before the Court are three motions.

First, Plaintiffs Trendsettah USA, Inc. and Trend Settah, Inc. (together "Trendsettah") moved to extend the time to appeal the judgment. Docket No. 288. Defendant Swisher International Inc. ("Swisher") has not opposed.

Second, Trendsettah moved to amend the judgment to add prejudgment and postjudgment interest. Docket No. 283. Swisher filed a notice of non-opposition. Docket No. 300.

Third, Trendsettah moved for an order awarding fees and expenses. Docket No. 284. Swisher opposed. Docket No. 300. Trendsettah replied. Docket No. 329.

For the following reasons, the Court **grants** Trendsettah's motion to extend the time for filing an appeal and **grants** Trendsettah's motion for prejudgment interest. It awards **$938,744.63** in prejudgment interest. The Court **grants in part** Trendsettah's motion for attorneys' fees and **awards** Trendsettah **$2,121,388.95** in attorneys' fees and **$254, 716.16** in disbursements.

BACKGROUND

This case's background is familiar to the parties and detailed in the Court's prior order. Docket No. 274. The Court recites only those facts necessary to this order.

Trendsettah initially alleged nine causes of action: (1) monopolization and attempted monopolization in violation of the Sherman Act, 15 U.S.C. § 2; (2) monopolization and attempted monopolization in violation of Florida Antitrust Law, Fl. Stat. § 542.19; (3) breach of contract; (4) breach of the implied covenant of good faith and fair dealing; (5) trade libel; (6) tortious interference with contract; (7) intentional interference with prospective business relationships; (8) negligent interference with prospective business relationships; and (9) unfair

competition in violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 et seq. Docket No. 1.

In May 2015, the Court dismissed the state law claims for negligent interference and unfair competition for failure to state a claim. Docket No. 40. In January 2016, the Court dismissed the state law claims for trade libel, tortious interference with contract, and intentional interference with prospective business relationships on summary judgment. Docket No. 99. The Court then scheduled trial on the remaining antitrust and contract claims for March 2016.

At trial, a jury found Swisher liable on the antitrust and contract claims. Docket No. 207 at 2–3. Swisher then moved for renewed judgment as a matter of law on the antitrust claims or, in the alternative, for a new trial on both the antitrust and contract claims. Docket No. 233. The Court granted Swisher's motion on the monopolization claim, but denied it on the attempted monopolization claim. Docket No. 262 at 19. The Court granted the motion for a new trial on the attempted monopolization claim and a conditional new trial on the monopolization claim, but the Court denied Swisher's motion for a new trial on the contract claims. Id.

Swisher and Trendsettah both moved for reconsideration. Docket Nos. 267, 268. The Court granted Swisher's motion for reconsideration of its order on summary judgment and denied Trendsettah's motion for reconsideration of its order granting Swisher a new trial. Docket No. 274. The Court granted summary judgment in Swisher's favor on Trendsettah's antitrust claims. Id.

The Court entered judgment in Trendsettah's favor and against Swisher on Trendsettah's claims for breach of contract and breach of the covenant of good faith and fair dealing in the amount of $9,062,679.00 plus prejudgment interest if and to the extent ordered by the Court. Docket No. 296. It further awarded Trendsettah postjudgment interest on the judgment on its claims for breach of contract and breach of the covenant of good faith and fair dealing in accordance with 28 U.S.C. § 1961. Id. The Court entered judgment in Swisher's favor and against Trendsettah on all other claims. Id. This included Trendsettah's claims for violation of Section 2 of the Sherman Act, 15 U.S.C. § 2; violation of the Florida Antitrust Law, Fla. Stat. § 542.19; trade libel; tortious interference with contract; intentional interference with prospective economic relations; negligent

interference with prospective economic relations; and violation of the California Unfair Competition Law, Cal. Bus. & Profs. Code § 17200. Id.

MOTION TO EXTEND TIME TO APPEAL THE JUDGMENT

I. Legal Standard

Federal Rule of Civil Procedure 58(e) allows a district court to extend the time available to appeal a final judgment while a motion for attorneys' fees is pending. Rule 58(e) states

> Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4(a)(4) as a timely motion under Rule 59.

Federal Rule of Appellate Procedure 4(a)(4)(A) states that "the time to file an appeal runs for all parties from the entry of the order disposing of" a motion for "attorneys' fees under Rule 54 if the district court extends the time to appeal under Rule 58."

Rule 4(a)(4)(B) further states that "[i]f a party files a notice of appeal after the court announces or enters a judgment--but before it disposes of any motion listed in Rule 4(a)(4)(A)--the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered."

Therefore, a district court may extend the time available for appeal so that the party moving for attorneys' fees may simultaneously appeal the judgment on the merits and the court's award of attorneys' fees.

II. Analysis

On December 6, 2016, Trendsettah renewed its motion for attorneys' fees. Docket No. 288. On December 9, 2016, Trendsettah filed a notice of appeal "in an abundance of caution in case the District Court's November 9, 2016 order is construed as a final judgment." Docket No. 291. The Court entered judgment on December 14, 2016. Docket No. 296.

Here the Court finds that it would best serve the interests of judicial economy to extend the time for filing a notice of appeal until the entry of its judgment on the motion for attorneys fees. This will allow the parties to simultaneously appeal the merits judgment and the Court's order on attorneys' fees. Therefore, the time to file an appeal runs for all parties from the entry of the Court's order on Trendsettah's motion for attorneys' fees.

MOTION TO AMEND JUDGMENT

Trendsettah requests prejudgment interest of $929,018.31 on the contract damages award, plus $1215.79 per day for each day from December 7, 2016 until the day the final judgment is entered. Docket No. 283. Swisher does not oppose Trendsettah's request for prejudgment interest. Docket No. 301. The Court entered judgment on December 14, 2016. Docket No. 296. Therefore, the Court **grants** Swisher's motion to amend the judgment and awards **$938,744.63** in prejudgment interest.[1]

The Court's order already includes an award of postjudgment interest under

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[1]Trendsettah calculated prejudgment interest from the date of filing, October 14, 2014. Docket No. 283 at 3 (citing Docket No. 1); see Am. Home Assur. Co. v. Weaver Aggregate Transp., Inc., 89 F. Supp. 3d 1294, 1310– 1(M.D. Fla. 2015) ("Courts in this District have found it reasonable to use the date of the filing of the complaint as the date on which payment was due."). It used the statutory rate set by Florida's Chief Financial Officer. Docket No. 283 at 4–5; see Fla. Stat. §§ 55.03, 687.01. From there it arrived at an award of $929,018.31 for October 14, 2014 through December 6, 2016 (the date Trendsettah filed the motion to amend). Id. at 5. Using the statutory interest rate, it then calculated a daily interest rate of $1,215.79 per day for each day from December 7,2016 until the day the Court entered the final judgment (December 14, 2016). Id. December 7, 2016 – December 14, 2016=8 days x $1215.79=$9,726.32. $9,726.32 + $929,018.31=938,744.63.

28 U.S.C. § 1961. Therefore, it sees no reason to amend the judgment to include postjudgment interest.

MOTION FOR ATTORNEYS' FEES

I. Legal Standard

The parties agree that Florida law governs Trendsettah's motion. Docket No. 284 at 3; Docket No. 300 at 2. Florida applies the federal lodestar approach to determine attorneys' fees. Florida Patient's Comp. Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985) holding modified by Standard Guar. Ins. Co. v. Quanstrom, 555 So. 2d 828 (Fla. 1990). Courts should consider the following factors:

> (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
> (3) The fee customarily charged in the locality for similar legal services.
> (4) The amount involved and the results obtained.
> (5) The time limitations imposed by the client or by the circumstances.
> (6) The nature and length of the professional relationship with the client.
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
> (8) Whether the fee is fixed or contingent.

Id.

Consistent with the federal lodestar approach, courts determine the number of hours reasonably expended on the litigation. Id. Courts then determine "a reasonable hourly rate for the services of the prevailing party's attorney." Id. The party seeking fees bears the "burden of establishing the prevailing 'market rate' i.e., the rate charged in that community by lawyers of reasonably comparable skill,

experience and reputation, for similar services." Id. at 1151.

II. Attorneys' Fees Provision

The Private Label Agreements at issue here provide for awards of attorneys' fees. Both agreements contain identical provisions:

> 16.3 Attorneys' Fees. In the event that either party shall bring any action upon any default in performance or observance of any covenant herein, the party judicially determined to be in such default shall indemnify the other against, or shall expeditiously reimburse such other party for, reasonable attorneys' fees (including disbursements) incurred in pursuit of such judicial determination; provided, however, that if no party is judicially determined to be in default, the party bringing such action shall indemnify the other party against, or. shall expeditiously reimburse such other party for, reasonable attorneys' fees (including disbursements) incurred in defense of such action.

Decl. of Randolph Gaw ("Gaw Decl."), Ex. 20 at 10, ¶ 16.3; Ex. 21 at 11, ¶ 16.3.

III. Analysis

A. Reasonable Number of Hours

If a party can only recover fees for some of its claims, the court must determine whether the claims involve a "common core of facts and are based on related legal theories[.]" Current Builders of Florida, Inc. v. First Sealord Sur., Inc., 984 So. 2d 526, 533–34 (Fla. Dist. Ct. App. 2008) (internal quotations omitted). In such a case, the court may award the full fee "unless it can be shown that the attorneys spent a separate and distinct amount of time on counts as to which no attorney's fees were sought [or were authorized]." Id. (internal quotations omitted and alteration in original). But "the party seeking fees has the burden to allocate them to the issues for which fees are awardable or to show that the issues were so intertwined that allocation is not feasible." Id.

For instance, Current Builders found that claims were inextricably intertwined because the surety's liability depended on the subcontractor's breach of contract. Id. at 534. The case concerned (1) whether the subcontractor breached the subcontract, (2) whether the surety received proper notice under the performance bond, and (3) whether the general contractor breached the subcontract. Id. at 529. The jury found that the subcontractor breached the contract, but that the surety did not receive proper notice — thus its liability was discharged. Id. at 530. Because the surety and the subcontractor had the same counsel, the trial court awarded the surety only half of its attorneys' fees. The appellate court reversed because, even though the surety only prevailed on the notice issue, the surety's liability depended on the subcontractor's breach of contract. Therefore, "[t]hey involved a common core of facts . . . [and the surety] could not defend one without defending the other." Id. at 534.

Likewise, another Florida court affirmed an award of fees for "all hours reasonably expended on the litigation" — even though the plaintiff "failed to prevail on every contention raised in the lawsuit." Centex-Rooney Const. Co. v. Martin Cty., 725 So. 2d 1255, 1260 (Fla. Dist. Ct. App. 1999) (quoting B & H Constr. & Supply Co. v. District Bd. of Trustees of Tallahassee Community College, Florida, 542 So. 2d 382, 388–89 (Fla. 1st DCA 1989)). In Centex-Rooney, a construction breach of contract case, the defendant argued that the fee award was excessive because it included fees for "litigation of purportedly unsuccessful claims and claims against settling subcontractors." Id. The appellate court rejected this argument because the case "involved a 'common core of facts' premised on related legal theories concerning the design and construction of the courthouse and office building." Id. Therefore, "a significant portion" of counsel's time "was devoted generally to the litigation as a whole[.]" This made it "difficult to divide the hours expended on a claim-by-claim basis." Id. (quoting Hensley v. Eckerhart, 461 U.S. 424, 435 (1983)).

Here Trendsettah seeks to recover for 2869.8 hours its attorneys spent litigating this action and 1079 hours of contract attorney work. Docket No. 284 at 7; Docket No. 329 at 1. Trendsettah argues that this excludes any work devoted solely to antitrust claims. Trendsettah's initial motion requested fees for 3013 hours. Docket No. 284 at 7. Trendsettah excluded all time after May 18, 2016 because it was primarily devoted to Trendsettah's post-trial briefing on antitrust issues. Gaw Decl. ¶ 3. Trendsettah's calculation also excluded 265 hours that were

solely devoted to antitrust issues. See Decl. of Gerald Knapton ("Knapton Decl.") Ex. 2 (listing excluded hours). The excluded hours include time spent (1) researching and reviewing documents related to the antitrust claims, id. at1, 7–9, 11, 18; (2) opposing Swisher's motion for judgment on the pleadings, id. at 3; (3) researching and analyzing Swisher's market share and market definition, id. at 4–5, 9, 12, 19, 27; (4) investigating Swisher's alleged anticompetitive conduct, id. at 7-9); and (5) opposing Swisher's motion for partial summary judgment on the antitrust claims, id. at 16–18.

Swisher's opposition identified additional antitrust tasks that Trendsettah did not deduct hours for. Docket No. 300 at 4–5. In its reply, Trendsettah conceded that it overlooked these tasks and deducted 136.8 more hours. Docket No. 329 at 1. It deducted (1) 60.2 hours for its opposition to Swisher's Daubert motion, Reply Decl of Mark Poe ("Poe Reply Decl.") Ex. A; 31.5 hours for its motion to compel deposition testimony and deposition of Lou Caldropoli on profit margins,[2] id. Ex. B; and 51.5 hours for a third-party deposition on the antitrust issues and related motion practice, id. Ex. C. Docket No. 329 at 5–6. Therefore, the Court deducts 143.2 hours from Trendsettah's initial request of 3013 hours for a total request of 2869.8 hours.

Trendsettah argues that any additional work on antitrust claims was "so inextricably intertwined" with the contract claims that any further reduction is inappropriate. Docket No. 384 at 8–11. Swisher argues that the requested number of hours is unreasonable and that the Court should reduce the number of billable hours by 33 to 50 percent. Docket No. 300 at 12–13. Alternatively, Swisher offers a categorical reduction that would reduce the claimed hours to 2014.25.

First, the Court finds that Trendsettah's proposed number of hours is reasonable. This litigation lasted over 17 months and required substantial discovery. It also involved complex commercial and antitrust issues, as well as a jury trial and extended post-trial briefing. Trendsettah has provided a detailed billing summary and time sheets to justify its hours. Gaw Decl. Ex. 1–3. It also provided expert testimony that counsel billed a reasonable number of hours for

[2] The Court notes a discrepancy between the total number of "hours omitted" (25.1) in Ex. B and the number omitted when each attorney's hours are added (31.5). The Court assumes that the total is an arithmetic error and applies the total for each attorney.

each specific task. Knapton Decl. ¶¶ 27–32. In addition, Trendsettah's counsel reasonably distributed work among attorneys of various skill levels. Finally, Trendsettah deserves attorneys' fees for bringing this motion. See State Farm Fire & Cas. Co. v. Palma, 629 So. 2d 830, 833 (Fla. 1993). Trendsettah spent 158.8 hours bringing this motion and an additional 64 hours on the reply. Knapton Decl. ¶ 25 (citing Ex. 2); Reply Gaw Decl. Ex. D. This is reasonable given the size of attorneys' fees at stake.

Second, Trendsettah's contract and antitrust claims were inextricably intertwined as a factual matter. Both sets of claims stemmed from common facts — Swisher's refusal to fill orders for Splitarillos as required by the Private Label Agreements. From the start, Trendsettah focused its claims, discovery, and arguments on the facts surrounding the agreements. For instance, Trendsettah alleged that "Swisher breached the Private Label Agreements by refusing to fulfill [Trendsettah's] orders for Splitarillo products that it had contractually agreed to produce." Docket No. 1 ¶ 62. Likewise, it alleged that Swisher — in violation of the Sherman Act — restricted Splitarillos' output and refused to deal with Trendsettah. ¶ 48–54.

Furthermore, during and after trial, both parties connected the breach to the antitrust claims. In its closing argument, Trendsettah argued that Swisher breached its contracts and violated antitrust laws "in the course of breaching those contracts." Tr. Trans. 3/29 122:2–8, Docket No. 232, Ex 9. And Swisher even relied on these statements in its renewed motion for judgment as a matter of law: it argued that the claims "were presented to the jury as inextricably intertwined", involved "essentially the same evidence", and concerned "the same essential conduct." Docket No. 232 at 2, 28–29.

Because Trendsettah's contract and antitrust claims involved the same factual issues, it is not feasible to allocate between them. The same document review, depositions, and witnesses would likely be necessary to litigate both sets of claims. Therefore, as in Current Builders or Centex-Rooney, the Court will award fees for all time not spent exclusively on antitrust claims. Trendsettah has already deducted for that time; thus its proposed 2876.2 hours is appropriate.

Swisher's challenges to the total hours are unpersuasive. Swisher argues that Trendsettah cannot receive a full fee award because the Court's judgment

significantly reduced Trendsettah's jury verdict; yet Trendsettah only reduced its requested hours by 6 percent. Docket No. 300 at 6. Any such adjustment is done after the Court determines the lodestar. See, e.g., Rowe, 472 So. 2d at 1151 ("Once the court arrives at the lodestar figure, it may add or subtract from the fee based upon a 'contingency risk' factor and the 'results obtained.'"). Therefore, the Court addresses this issue later in its order.

In addition, Swisher fails to distinguish Current Builders and Centex-Rooney. Swisher contrasts this case with Current-Builders on the basis that Swisher's contract claim is separate from any antitrust claims. Docket No. 300 at 7. For this proposition, Swisher relies on the Court's prior orders. But these orders show the exact opposite — post-trial the Court recognized that "Trendsettah's claims for monopolization and attempted monopolization were based solely on Swisher's breach of the private label agreements." Docket No. 262 at 13. The Court recognized that the claims "involve substantially different elements requiring substantially different kinds of evidentiary proof." Docket No. 262 at 17. But it also noted that "the antitrust and contract claims are based on Swisher's breach of the private label agreements." Id. Therefore, the jury had to find breach of the private label agreements to determine whether such breach constituted attempted monopolization. Id. The claims' separate legal requirements do not preclude their common factual core.

Swisher also cannot distinguish Centex-Rooney. Swisher argues that Centex-Rooney is irrelevant because it did not consider whether a party could recover for unsuccessful claims. Docket No. 300 at 7. This is simply incorrect. Centex-Rooney specifically affirmed a complete award of fees — even though the fee award included fees for unsuccessful claims. 725 So. 2d at 1260. Thus the case is relevant authority.

In sum, the Court finds that Trendsettah's requested number of hours is reasonable and will award fees on 2876.2 hours.

B. Reasonable Hourly Rate

Trendsettah seeks rates of $870 per hour for Gaw | Poe LLP ("Gaw | Poe") partners Mark Poe ("Poe") and Randolph Gaw ("Gaw"); it seeks a rate of $670 for Of Counsel Victor Meng ("Meng") and Samuel Song ("Song"). Docket No. 284 at

17. Swisher argues that these rates are unreasonable. Docket No. 300 at 8–10. It proposes that — at most — the Court should apply an hourly rate of $350 to all Gaw | Poe attorneys. Id.

Trendsettah bears the burden of establishing a reasonable hourly rate. Rowe, 472 So. 2d at 1151. To meet this burden, Trendsettah submits biographical information for its counsel. Gaw Decl. ¶ ¶ 7–17, Ex. 4–7. Trendsettah also provides expert testimony from Gerald Knapton ("Knapton"). Mr. Knapton draws on the 2015 Real Rate Report Snapshot ("Rate Report"), which provides data on more than $9.8 billion in fees between 2012 and 2014. Knapton Decl. ¶ 39, Ex 5 at 6. For Mr. Poe and Mr. Gaw, Mr. Knapton recommends the Third Quartile of Los Angeles antitrust rates. Id. ¶ 42, Ex. 5 at 83. For Mr. Meng and Mr. Song, Mr. Knapton suggests the median rate of $670 per hour. Id. Alternatively, if the Court does not apply an antitrust rate, Mr. Knapton suggests the commercial rates of $800 and $600. Id. Ex. 5 at 74. At a minimum, Mr. Knapton argues that the Los Angeles litigation rates of $744 and $610 are appropriate. Id. Ex. 5 at 29.

In addition to Mr. Knapton's declaration, Trendsettah argues that its rates are competitive when compared to those of Swisher's counsel. Docket No. 284 at 13. It submits the 2013 National Journal Law Firm Billing Survey, which shows that associates at Gibson Dunn averaged $590 per hour and partners averaged $980. Gaw Decl., Ex. 9. Moreover, Mr. Poe, Mr. Meng, and Mr. Song's rates ranged from $725 to $760 at their prior firm. Decl. of Mark Poe ("Poe Decl.") ¶¶ 2–4.

Finally, Trendsettah argues that the Rowe factors support the reasonableness of their requested rates. Docket No. 284 at 14 (citing 472 So. 2d at 1150). First, Gaw | Poe's acceptance of this matter precluded it from handling other matters. Second, this case involved a substantial amount of money and resolved in Trendsettah's favor. Third, the Court imposed time limitations on the parties. Fourth, Gaw | Poe did not have a prior professional relationship with Trendsettah.

In response, Swisher argues that Trendsettah's own data shows that its proposed hourly rates are unreasonable. Docket No. 300 at 8–10. First, Swisher argues that Mr. Knapton should have used the commercial litigation rates, not the antitrust rates. Id. at 9. Second, Swisher argues that, given Gaw | Poe's small size,

Mr. Knapton should have applied the rates for firms of 50 lawyers of less. Id. This data shows that attorneys at smaller firms bill — at most — $350 per hour. Id. (citing Knapton Decl., Ex. 5 at 34). Furthermore, partners with less than 21 years of experience bill $575 per hour. Id. (citing Ex. 5 at 35). Because Trendsettah's counsel all have less than 21 years of experience, Swisher argues that the Court should apply these lower rates. Id. Third, Swisher argues that the Court should apply a lower rate because the litigation took place in Orange County, not in Los Angeles. Id. at 10.

The Court finds that the appropriate rates are $744 for Mr. Gaw and Mr. Poe and $510 for Mr. Meng and Mr. Song. Trendsettah's proposed rates of $870 and $670 are too high. While this case involved significant antitrust issues, Trendsettah has not shown that Gaw | Poe has any specialized antitrust experience. See Gaw Decl. Ex. 4–8 (no antitrust experience in attorney profiles). Therefore, Gaw | Poe should not receive rates for specialized antitrust counsel. Furthermore, although counsel have significant experience, the Court disagrees with Mr. Knapton's alternative recommendation that they be compensated at the median ($600) and third quartile ($800) rates for *all commercial partners*. Knapton Decl. ¶ 42, Ex. 5 at 74. This is especially high because other national data suggests that top-billing litigation partners with under 21 years of experience bill $575. Id. Ex 5 at 35. Finally, Gibson Dunn's or Morrison Foerster's rates are not relevant benchmarks for Gaw | Poe's rates because of differences between the firms.

At the same time, Swisher's proposed rate of $350 per attorney would undercompensate Gaw | Poe. While $350 may be a common rate for small firms nationwide, it is low for the Los Angeles area. Furthermore, Gaw | Poe's attorneys have experience in a large firm setting that they bring to complex cases. See Gaw Decl., Ex. 4–7 (attorney biographical information). And, in the Court's experience, there is not a significant difference in fees between the Orange County and Los Angeles legal markets; thus, any reduction on that basis would be inappropriate.

Therefore, the Court will apply the third quartile rates for Los Angeles litigation partners ($744) to Mr. Gaw and Mr. Poe; it will apply the third quartile associate rate ($510) to Mr. Song and Mr. Meng. See Knapton Decl., Ex 5 at 29. The Court applies the third quartile rate because Trendsettah's counsel has significant experience, lacked a prior relationship with Trendsettah, and was likely precluded from other work by this case's significant effort. The Court will apply

the first quartile rate of $231.56 to the contract attorneys; this reflects their inexperience and limited involvement in the litigation.

The Court determines the total number of hours below. Based on these totals it calculates the lodestar.

Table 1: Total Number of Hours

Attorney	**Hours Submitted (Gaw Decl. Ex. 3)**	**Additional Hours Omitted on Reply[3] (Reply Gaw Decl. Ex. D)**	**Hours Expended on Reply (Reply Gaw Decl. Ex. D)**	**Total Hours**
R. Gaw	788.2	6.8 (Ex. A) + 27.7 (Ex. B) + 0.5 (Ex. C) = 34.5	0.8	788.2 – 34.5 + 0.8 = 754.5
M. Poe	866.5	1.6 (Ex. B) + 51 (Ex. C) = 52.6	11.7	866.5 – 52.6 + 11.7 = 825.6
V. Meng	1190.2	53.4 (Ex. A) +2.2 (Ex. B) = 55.6	0.6	1190.2 – 55.6 + 0.6 = 1135.2
S. Song	178.4	0	50.9	178.4 – 0 + 50.9 =229.3

[3]The Court notes a discrepancy between the total number of "hours omitted" (25.1) in Ex. B and the number omitted when each attorney's hours are added (31.5). The Court assumes that the total is an arithmetic error and applies the total for each attorney.

Table 2: Lodestar Calculation

Attorney	Rate	Hours	Fee
R. Gaw	$744	754.5	$744 x 754.5 = $561,348
M. Poe	$744	825.6	$744 x 825.6 = $614,246.4
V. Meng	$510	1135.2	$510 x 1135.2 = 578,952
S. Song	$510	229.3	$510 x 229.3 = 116,943
Contract Attorneys	$231.56	1079.2	$231.56 x 1079.2 = 249,899.55
		Total	**$2,121,388.95**

In sum, the Court determines that the lodestar is $2,121,388.95.

C. Contingency Fee Multiplier and Lodestar Adjustment

After the court determines the lodestar figure, "it may add or subtract from the fee based upon a 'contingency risk' factor and the 'results obtained.'" Rowe, 472 So. 2d at 1151; see also Sawgrass Mut. Ins. Co. v. Mone, 201 So. 3d 182, 185 (Fla. Dist. Ct. App. 2016) (applying Rowe and finding that a contingency fee multiplier is inappropriate). Florida law permits the court to apply a contingency fee multiplier — even when a contract provides the basis for a court-awarded fee. Bell v. U.S.B. Acquisition Co., 734 So. 2d 403, 411 (Fla. 1999). The court may consider applying a multiplier "if the evidence in the record establishes that: (1) the relevant market requires a contingency multiplier to obtain competent counsel; (2) the attorney was unable to mitigate the risk of nonpayment in any other way; and (3) use of a multiplier is justified based on factors such as the amount of risk involved, the results obtained, and the type of fee arrangement between attorney and client." Id. at 412. "If the trial court determines that success was more likely than not at the outset, it may apply a multiplier of 1 to 1.5; if the trial court

determines that the likelihood of success was approximately even at the outset, the trial judge may apply a multiplier of 1.5 to 2.0; and if the trial court determines that success was unlikely at the outset of the case, it may apply a multiplier of 2.0 to 2.5." Id. at 408 (quoting Quanstrom, 555 So. 2d at 834).

Here Trendsettah argues that a multiplier of 1.3 is appropriate for five reasons. First, Trendsettah faced difficulty obtaining competent counsel. Docket No. 284 at 18. The company approached two firms who were unwilling to take the case because Trendsettah could not pay them on an hourly basis. See Decl. of Tatum Hillmoe ("Hilmoe Decl.") ¶ 3–4; Decl. of Ramzy Rahib ("Rahib Decl.") ¶ 2–4. Second, Trendsettah's counsel took the case on a contingent basis. Docket No. 384 at 19 (citing Gaw Decl. ¶ 2). Third, Trendsettah's counsel undertook great risk because they had limited financial resources compared to their opponent. Docket No. 384 at 19. Fourth, Trendsettah's counsel obtained a significant jury verdict in Trendsettah's favor. Id. Fifth, Trendsettah had an even chance of success at the outset because Swisher aggressively litigated the case. Id. at 19–20. These are legitimate factors which would support a multiplier.

However, the result here, though substantial, reflect significant limitations. First, the Court granted summary judgment on Trendsettah's claims for trade libel, tortious interference with contract, and intentional interference with prospective economic relations. Docket No. 99. Some reduction is appropriate because Trendsettah failed on these claims. Second, although counsel obtained a significant verdict on its contract claims, the Court overturned its antitrust verdict. This eliminated Trendsettah's antitrust claims and more than half of its damages. These claims occupied a significant amount of the case; therefore, Trendsettah's failure justifies reducing the lodestar. But, Swisher's proposed reduction is too stringent — just because the Court overturned the antitrust verdict does not negate the significant result Trendsettah otherwise achieved. Therefore, the Court finds that the factors which favor a multiplier offset those which favor reducing the lodestar.

In sum, the Court declines to apply a multiplier and also declines to reduce the lodestar. The Court awards Trendsettah $2,121,388.95 in attorneys' fees.

D. Disbursements

The Private Label Agreements permit Trendsettah to recover disbursements. Gaw Decl. Ex. 20 at 10, ¶ 16.3; Ex. 21 at 11, ¶ 16.3. Trendsettah seeks $640,730 in litigation disbursements. Docket No. 284 at 21. It also lists those expenses in detail. Gaw Decl., Ex. 14. After reviewing Trendsettah's documentation, the Court does not identify any unreasonable expenses. Although Trendsettah requests significant disbursements, this case was heavily litigated and required extensive discovery. As a result, Trendsettah incurred significant, but reasonable, expenses for e-discovery, travel, mediation, and trial consultants.

But the Court will not permit Trendsettah to recover expert fees for Dr. DeForest McDuff. McDuff served as an antitrust expert; therefore, Trendsettah cannot recover fees. Tr. 3/12 104:9–11 (tendering Dr. McDuff as "an expert witness in the field of antitrust economics and lost profits); see also Miami-Dade Cty. v. City Nat. Bank of Florida, 761 So. 2d 368, 370 (Fla. Dist. Ct. App. 2000) no recovery of expert fees for work on failed theory of the case). The Court will not award Dr. McDuff's fees of $386,013.84. Gaw Decl. ¶ 24, Ex. 15

Swisher argues that the Court should reduce all disbursements by 50 percent because of Trendsettah's limited success on its antitrust claims. Docket No. 300 at 11–12. But Swisher does not identify specific unnecessary disbursements, nor does it cite case law suggesting a reduction in disbursements is appropriate because of a party's limited success.

Therefore, the Court awards Trendsettah $254,716.16[4] in disbursements.

CONCLUSION

For the foregoing reasons, the Court **grants** Trendsettah's motion to extend the time for filing an appeal and **grants** Trendsettah's motion for prejudgment interest. It awards **$938,744.63** in prejudgment interest. The Court **awards** Trendsettah **$2,121,388.95** in attorneys' fees and **$254,716.16** in disbursements, as well as postjudgment interest on this award.

[4] $640,730 – $386,013.84 = $254,716.16